

### REMARKS

In the Office Action, the Examiner rejected Claim 20 for reasons not relating to patentability under 35 U.S.C. § 112. Applicant submits that such rejection of Claim 20 has been overcome.

In the Office Action, the Examiner rejected Claims 1-12 and 16-33 under 35 U.S.C. § 103 as being patentable over U.S. Patent No. 6,554,762 to Leysieffer in view of U.S. Patent No. 6,154,023 to Durand. Claims 13-15 were indicated as comprising allowable subject matter, and Claims 35-37 have been added in relation thereto.

Initially, Applicant reserves all options to remove Leysieffer as prior art. In any case, Applicant submits that all pending claims are allowable over Leysieffer and Durand. In particular, independent Claims 1 and 20 are directed to a method and system, respectively, for assessing the performance of a hearing aid that includes an implanted hearing aid actuator, wherein the method/system provide for a test device that is separate from the hearing aid and utilized/utilizable to generate a test signal. The method/system further provide for passage of an electrical signal through the hearing aid actuator of the hearing aid in response to the test signal. In turn a magnetic field generated by the hearing aid actuator in response to the electrical signal is measured/measurable by the test device to yield at least one test measure. Such test measure is then employed/employable to assess at least one performance parameter of the actuator. As may be appreciated, the use/provision of a separate test device to generate a test signal and obtain a magnetic field measurement to assess hearing aid performance reduces overall complexity, cost and hearing aid requirements.

Leysieffer fails to disclose the method or system of Claims 1 and 21 respectively. More particularly, Leysieffer fails to disclose, *inter alia*, an arrangement in which a separate test device may be utilized to generate a test signal for use in the assessment of the performance of a hearing aid

that includes an implanted hearing aid actuator. Rather, Leysieffer teaches arrangements in which signals are generated by on-board componentry, i.e. componentry that is part of a hearing aid. For example, in the arrangements of Figs. 1, 6 and 7 of the '762 patent, an implantable hearing aid system 1 comprises an implantable electronics module 12 that includes a microcontroller 17 and signal processor 13 that provide an output used to trigger a transducer 16 or 36. See, e.g. Column 13, Lines 11-56. With respect to the Fig. 11 arrangement, the '762 patent further fails to disclose a separate test device as per the present invention. Rather, '762 patent specifically states that:

“Fig. 11 schematically shows the structure of a partially implantable hearing system . . . [that] includes a microphone 10, an electronic module 74 . . . , the power supply (battery) 30 . . . in an external module 76 . . .” Column 20, Line 64 to Column 21, Line 4.

Durand also fails to disclose the method or system of Claims 1 and 21, respectively. In this regard, Durand fails to disclose or suggest, *inter alia*, an arrangement in which a test device may be utilized to generate a test signal for use in the assessment of the performance of a hearing aid that includes an implanted hearing aid actuator. Indeed, Durand fails to make any provision for the generation of such a test signal. Rather, Durand is solely confined to arrangements for sensing current carried through a conductor that is located beneath or on top of a surface. That is, there is no provision for the generation of a test signal that is provided to an implanted hearing aid actuator for any purpose, much less for the stipulated performance-assessment purpose identified in Claims 1 and 20 of the present invention.

In addition to the noted shortcomings of Leysieffer and Durand, Applicant submits that Leysieffer and Durand cannot be properly combined to render Claims 1 or 20 obvious. In this regard, Applicant notes that no suggestion or motivation is provided by either Leysieffer or Durand

to combine the teachings thereof. Specifically, Leysieffer is only directed to arrangements in which signals are generated by on-board componentry (i.e. componentry that is part of a hearing aid) and provided to an implanted transducer, and in which on-board componentry (i.e. componentry that is part of a hearing aid) obtains an impedance measurement. There is absolutely no suggestion or motivation provided in Leysieffer to utilize a test signal that is generated by a separate, externally located test device. Further, there is absolutely no suggestion or motivation provided by Leysieffer to utilize an externally located device to measure any attribute of an implanted actuator, much less to measure a magnetic field generated by an implanted hearing aid actuator in response to an electrical signal passing therethrough. Further, since Durand fails to disclose or suggest any applicability of its teachings to arrangements in which a test signal is generated by an external test device for use in assessing an implanted hearing aid actuator, Durand also provides no motivation or suggestion for a combination with Leysieffer.

Moreover, Applicant submits that even if Leysieffer and Durand could be properly combined, the resulting combination would not yield the method or system of Claims 1 and 20, respectively. Again, neither Leysieffer nor Durand disclose or suggest the use of an external test device to generate a test signal as per the method and system of Claims 1 and 20, respectively.

In view of the foregoing, Applicant submits that Claims 1 and 20 are allowable over Leysieffer and Durand. Applicant further submits that all claims dependent upon Claims 1 and 20 are allowable over Leysieffer and Durand for the same reasons as Claims 1 and 20, and further since such claims stipulate further combinative features not disclosed or rendered obvious by the cited art.

Finally, Applicant notes the provisional obviousness-type double patenting rejection based on co-pending Application No. 10/083,181, as set forth in the Office Action. Applicant submits that, due to the amendments set forth hereinabove, the basis for such provisional obvious-type double

patenting rejection may be obviated with respect to one or more of the claims in question. As such, Applicant requests further consideration of the claims, wherein Applicant may then address any further provisional obviousness-type double patenting rejection as may be appropriate via terminal disclaimer.

In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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